IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

OP.No. 2843 of 2000(L)

PETITIONER:

ASWATHY ELSA MATHEW,
LAB TECHNICIAN,
CENTRAL RESEARCH INSTITUTE FOR HOMEOPATHY,
S.PURAM, KOTTAYAM, KERALA STATE.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. **THE SECRETARY, MINISTRY OF HEALTH & FAMILY WELFARE DEPARTMENT, NIRMAN BHAVAN, NEW DELHI.**

2. **THE DIRECTOR, CENTRAL COUNCIL FOR RESEARCH IN HOMEOPATHY, JANAKPURI, NEW DELHI – 58.**

3. **THE ASSISTANT DIRECTOR,**
   CENTRAL RESEARCH INSTITUTE FOR HOMEOPATHY,
   S.PURAM, KOTTAYAM, KERALA STATE.

BY ADV. SRI.P.S.SREEDHARAN PILLAI, SCGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.2843/2000 L

ORDER ON C.M.P.NO.4643/2000 IN O.P.NO.2843/2000 L

CLOSED

4/06/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF LETTER NO.7-67/97-CCRH/ESTT./PC/3874 DTD. 15/02/1999 FROM THE 2ND RESPONDENT TO THE 1ST RESPONDENT.**

EXT.P2: **COPY OF ORDER NO.2.28015/60-87/H DTD. 28TH FEB.1990 ISSUED BY THE 1ST RESPONDENT.**

EXT.P3: **COPY OF ORDER NO.NIMH/PER/HPCA/90-91 DTD. 19/07/1990 ISSUED BY THE CHIEF ADMINISTRATIVE OFFICER, NIMHANS.**

EXT.P4: **COPY OF ORDER NO.1-13/93-CRIH/767 DTD. 15/06/1993 ISSUED BY THE 3RD RESPONDENT.**

EXT.P5: **COPY OF REPRESENTATION DTD. 26/05/1998 FILED BY THE PETITIONER BEFORE THE HON'BLE MINISTER FOR HEALTH, GOVT. OF INDIA.**

EXT.P6: **COPY OF REPRESENTATION DTD. 7/98 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

EXT.P7; **COPY OF ORDER NO.7-38/93-CCRH/ESTT./IN-SITU/4385 DTD. 21/07/99 ISSUED BY THE 2ND RESPONDENT.**

EXT.P8; **COPY OF COMMUNICATION NO.1-43/99-2000/CRIH-KTM./CC/815 DTD. 31/12/99 OF THE 3RD RESPONDENT.**

EXT.P9: **COPY OF ORDER NO.F.NO.12-72/2000-CCRH/ESTT/ACP/65. DTD. 10/04/2002 ALONG WITH THE LIST ISSUED BY THE 2ND RESPONDENT.**

EXT.P10: **COPY OF ORDER NO.F.NO.12-72/2000-CCRH/ESTT/3301 DTD. 6TH NOVEMBER, 2001 ISSUED BY THE 2ND RESPONDENT.**

/TRUE COPY/

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 2843 of 2000 (L)

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Dated this the 4th day of June, 2007

J U D G M E N T

None appears for the respondents. I have perused the entire case file and have heard the learned counsel for the petitioner.

2. The petitioner is a Laboratory Technician in the Central Research Institute for Homoeopathy. Going by the statement filed on behalf of the respondents, the petitioner was stagnating and drawing the maximum of pay in the scale of pay of Rs.4000-6000. Her claim is that she is entitled to revision of scale of pay from Rs.4000-6000 to Rs.4500-7000, with effect from 01/01/1996. She further claims that, working in a hospital with 50 beds, she is entitled to Patient Care Allowance, with effect from 01/04/1987, sanctioned as per Ext.P2, to group 'C' & 'D' employees, and is entitled to the arrears of amounts due on that count. Her third claim is that she had been discharging duties

attached to the post of Bio-Chemist from 15/06/1993 and, therefore, entitled to additional charge allowance.

3. Her further claim for grant of benefit of grade promotions, as recommended by the fourth and fifth Pay Commissions, has been granted by the administration, pending this original petition.

4. As is apparent from Ext.P1, the scale of pay of Laboratory Technician, for those serving DGHS/CGHS, have been fixed as Rs.4500-125-7000, with effect from 01/01/1996, as per the letter dated 16/04/1998 of the Ministry of Health & F.W.. However, the scale of pay of Laboratory Technicians working in the Central Council for Research in Homoeopathy has been granted at Rs.4000-100-6000. The qualification prescribed for recruitment to the post of Laboratory Technician being as stated in Ext.P1, the Ministry was requested to reconsider the proposal and remove the anomaly and accord sanction of the competent authority for implementation of pay scale of Rs.4500-125-7000 for Laboratory Technicians of the Central Council for Research

in Homoeopathy with effect from 01/01/1996. Such entitlement for revision is neither refused by the Ministry nor disputed in the statement filed before this Court. It is merely stated that in-situ promotions to the scale of pay of Rs.4500-7000 has been granted to the petitioner with effect from 01/01/1997. The anomaly pointed out referable to violation of Articles 14 and 16 of the Constitution, has not been refuted by the respondents. Under such circumstances, I find no grounds to refuse relief No.1 to the petitioner.

5. It is the admitted case of the respondents that the petitioner is working in a hospital with 50 beds. Indisputably, therefore, going by the terms of Ext.P2, she is entitled to Patient Care Allowance in terms of that order, with effect from 01/04/1987.

6. In so far as the claim of the petitioner for additional charge allowance for discharging the duties attached to the post of Bio-Chemist, with effect from 15/06/1993, is concerned, the contention of the respondents in the statement is that the

petitioner was merely entrusted to carry out the laboratory investigations including that of Bio-Chemistry, as part of her duty and no additional charge was, however, entrusted. Entrustment of additional charge is nothing but the entrustment of additional duties and responsibilities and if an employee is compelled to carry out additional duties and responsibilities without, technically, giving additional charge, such a situation cannot be utilised by the administration to deprive the servant of due remuneration for the additional work done, which work will be over and above the duties and responsibilities attached to the post to which he/she is to work in terms of the duties and responsibilities attached to the post held by him/her. Therefore, having admitted that the petitioner was made to carry out the laboratory investigations including that of Bio-Chemistry, as part of her duty, it has to be treated that she is entitled to additional charge allowances. The date of such additional charge being with effect from 15/06/1993, which is not disputed, the petitioner is entitled to additional charge allowance of the post of Bio-Chemist, with effect from 15/06/1993, so long as she had been

discharging the duties carrying out laboratory investigations including that of Bio-Chemistry.

7. In the result:-

i. Respondents are directed to revise the scale of pay of the petitioner as Rs.4500-7000, with effect from 01/01/1996. It is hereby declared that the petitioner is entitled to such scale of pay with effect from 01/01/1996.

ii. It is declared that the petitioner is entitled to Patient Care Allowance in terms of Ext.P2, with effect from 01/04/1987 and the respondents are directed to make payment of all such arrears and to continue to pay the same.

iii. It is declared that the petitioner is entitled to additional charge allowance for having discharged the duties attached to the post of

Bio-Chemist, with effect from 15/06/1993, till date on which she seized to discharge such additional duties and responsibilities. The respondents are directed to release to the petitioner amounts due on such count.

iv. The respondents are hereby directed to release all arrears of amounts as aforesaid, within a period of three months from the date of receipt of a copy of this judgment.

The original petition is allowed to the above extend. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 2843 of 2000 (L)

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J U D G M E N T

4th June, 2007